

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY JAKARTA IMMEDIATE

C O N F I D E N T I A L STATE 203995

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E.O. 11652: GDS

TAGS: PGOV, ID

SUBJECT: INDONESIA ILLICIT PAYMENTS

1. AS DEPARTMENT DISCUSSED WITH DCM, THE SEC PLANS TO
ISSUE A COMPLAINT AGAINST KATY INDUSTRIES FOR ILLICIT PAY-
MENTS IN INDONESIA. THEY HAVE INFORMED THE DEPARTMENT
THAT THERE IS A SUBSTANTIAL POSSIBILITY THAT THE PROPOSED
DEFENDANTS WILL CONSENT TO THIS ACTION AND THAT THE CASE
WILL BE FILED ON MONDAY, AUGUST 14 OR SOMETIME SHORTLY
THEREAFTER. EMBASSY MAY DRAW ON THE FOLLOWING SUMMARY
OF THE COMPLAINT IN INFORMING GOI OF THE IMPENDING ACTION.

2. FROM AT LEAST IN OR ABOUT 1972 TO THE PRESENT, KATY,
CARROLL (CHAIRMAN OF KATY) AND JACOBS (A DIRECTOR OF KATY)
BY FAILING TO DISCLOSE THAT PAYMENTS WERE MADE TO OBTAIN
BUSINESS IN INDONESIA FOR KATY, ENGAGED IN TRANSACTIONS,
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PRACTICES, AND COURSES OF BUSINESS FOR KATY WHICH OPERATED
OR WOULD OPERATE AS A FRAUD AND DECEIT UPON PURCHASERS
AND PROSPECTIVE PURCHASERS OF SUCH SECURITIES.

3. IN EARLY 1972, CARROLL EXPRESSED AN INTEREST IN OBTAIN-
ING AN OIL EXPLORATION CONCESSION FOR KATY IN INDONESIA.
ABOUT JUNE 1972, AS A RESULT OF CARROLL'S INTEREST, A KATY
DIRECTOR AND ANOTHER INDIVIDUAL, LATER RETAINED BY KATY
AS A CONSULTANT (CONSULTANT), WHO WERE CLOSE PERSONAL

FRIENDS OF A HIGH LEVEL INDONESIAN GOVERNMENT OFFICIAL

(OFFICIAL), MET WITH THIS OFFICIAL AND HIS REPRESENTATIVE IN ROME, ITALY. AT THAT MEETING THE OFFICIAL AGREED TO ASSIST KATY IN OBTAINING A PRODUCTION SHARING CONTRACT. IN ADDITION, THE KATY DIRECTOR AND THE CONSULTANT MET WITH THE OFFICIAL'S REPRESENTATIVE AND AGREED THAT IF KATY RECEIVED AN OIL PRODUCTION SHARING CONTRACT KATY WOULD COMPENSATE THE CONSULTANT UNDER CIRCUMSTANCES WHERE THE DIRECTOR KNEW OR HAD REASON TO KNOW THAT THE CONSULTANT WOULD GIVE A PORTION OF SUCH COMPENSATION TO THE OFFICIAL AND THE OFFICIAL'S REPRESENTATIVE. UPON THEIR RETURN TO THE UNITED STATES THE KATY DIRECTOR AND THE CONSULTANT INFORMED CARROLL AND JACOBS OF THE OFFICIAL'S WILLINGNESS TO ASSIST KATY AND THE UNDERSTANDING REGARDING COMPENSATION.

4. ON OR ABOUT OCTOBER 2, 1972, KATY AT THE DIRECTION OF CARROLL AND JACOBS, ENTERED INTO AN AGREEMENT WITH THE CONSULTANT WHICH PROVIDED THAT IN ADDITION TO REIMBURSING THE CONSULTANT FOR ALL OUT OF POCKET EXPENSES INCURRED ON BEHALF OF KATY, KATY WOULD PAY HIM A CONSULTING FEE OF \$30,000 FOR THE YEAR ENDING SEPTEMBER 30, 1973, PAYABLE IN MONTHLY INSTALLMENTS OF \$2,500. FURTHERMORE, KATY HAD THE RIGHT TO EXTEND THE AGREEMENT FOR AN ADDITIONAL CONFIDENTIAL

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YEAR IF IT WAS SATISFIED WITH THE CONSULTANT'S EFFORTS ON ITS BEHALF. FROM ON OR ABOUT SEPTEMBER 27, 1972 TO MARCH 1974, KATY PAID THE CONSULTANT FEES TALLING AT LEAST \$43,750 PURSUANT TO THE OCTOBER 2, 1972 AGREEMENT.

5. IN ADDITION TO THE OCTOBER 2, 1972 AGREEMENT WITH THE CONSULTANT, KATY, AT THE DIRECTION OF CARROLL AND WITH JACOBS' KNOWLEDGE, RETAINED THE OFFICIAL'S REPRESENTATIVE AS KATY'S AGENT AND PAID HIM IN THAT CAPACITY AT LEAST \$22,500 BETWEEN IN OR ABOUT DECEMBER 1972 AND SEPTEMBER 1973. THESE PAYMENTS WERE IN ADDITION TO REIMBURSING THE OFFICIAL'S REPRESENTATIVE AS KATY'S AGENT FOR HIS OUT OF POCKET EXPENSES INCURRED ON BEHALF OF KATY AND WERE, IN PART, INTENDED BY KATY AS A SIGN OF GOOD FAITH.

6. ON OR ABOUT JANUARY 14, 1974, KATY ENTERED INTO A PRODUCTION SHARING CONTRACT ("CONTRACT") WITH PERTAMINA, THE INDONESIAN GOVERNMENT-OWNED OIL AND GAS ENTERPRISE, GRANTING KATY THE EXCLUSIVE RIGHT TO EXPLORE AND DEVELOP OIL AND NATURAL GAS WITHIN A DESIGNATED AREA OF INDONESIA. THE TOTAL COST OF THE CONTRACT WAS \$10,000,000. ON OR ABOUT FEBRUARY 6, 1974, KATY ASSIGNED 80 OF ITS RIGHTS IN THE CONTRACT TO ANOTHER OIL COMPANY LOCATED IN THE UNITED STATES. KATY RETAINED AN OPTION TO REACQUIRE FROM THIS OTHER OIL COMPANY AN ADDITIONAL 10 INTEREST IN THE

CONTRACT. THE OTHER OIL COMPANY WAS NOT TOLD OF THE AGREEMENT REGARDING COMPENSATION TO BE PAID BY KATY PURSUANT TO

THE UNDERSTANDING REACHED IN ROME, ITALY.

7. THE ASSISTANCE OF THE OFFICIAL WAS A MAJOR FACTOR IN KATY'S OBTAINING THE CONTRACT.

8. FROM IN OR ABOUT JANUARY 1974 TO APRIL 10, 1975, EXTENSIVE NEGOTIATIONS TOOK PLACE BETWEEN JACOBS AND CARROLL, ON BEHALF OF KATY, AND THE CONSULTANT REGARDING THE AMOUNT CONFIDENTIAL

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AND METHOD OF PAYMENT OF COMPENSATION TO BE PAID BY KATY PURSUANT TO THE UNDERSTANDING REACHED IN ROME, ITALY, AS MORE FULLY DESCRIBED IN PARAGRAPH 3 ABOVE.

9. DURING THE NEGOTIATIONS DESCRIBED IN PARAGRAPH 8 ABOVE, JACOBS PREPARED AND CARROLL REVIEWED AT LEAST TWO DRAFT AGREEMENTS WHICH SET FORTH A PLAN FOR COMPENSATING THE OFFICIAL, HIS REPRESENTATIVE AND THE CONSULTANT. THESE DRAFT AGREEMENTS DESCRIBED IN DETAIL THE AMOUNT OF COMPENSATION TO BE PAID BY KATY TO AN OFFSHORE CORPORATION WHICH THE CONSULTANT INTENDED TO ORGANIZE TO RECEIVE THE PAYMENTS. MOREOVER, THE OFFICERS, DIRECTORS AND SHAREHOLDERS OF THIS OFFSHORE CORPORATION WERE TO BE DESIGNATED BY THE OFFICIAL AND THE CONSULTANT.

10. FROM ON OR ABOUT MARCH 15, 1974 TO APRIL 12, 1974, CARROLL AND JACOBS CAUSED KATY TO ADVANCE \$50,000 TO THE CONSULTANT WITH THE KNOWLEDGE THAT THE \$50,000 WOULD BE USED FOR THE BENEFIT OF THE OFFICIAL. THIS \$50,000 WAS TO BE APPLIED AGAINST THE TOTAL ADVANCE CASH PAYMENTS MADE BY KATY TO THE OFFSHORE CORPORATION, AS MORE FULLY DESCRIBED IN PARAGRAPH 12 BELOW.

11. ON OR ABOUT MARCH 19, 1975, CARROLL ATTENDED A MEETING IN THE OFFICIAL'S RESIDENCE IN INDONESIA. THE OFFICIAL, THE OFFICIAL'S REPRESENTATIVE, THE CONSULTANT AND ANOTHER KATY DIRECTOR WERE ALSO PRESENT. AT THIS MEETING DISCUSSIONS WERE HELD TO RESOLVE DIFFERENCES REGARDING THE AMOUNT OF COMPENSATION TO BE PAID BY KATY. ON OR ABOUT MARCH 11, 1975, JACOBS, AFTER DISCUSSIONS WITH THE CONSULTANT, PREPARED OR CAUSED TO BE PREPARED A LETTER WHICH SET FORTH THE CURRENT UNDERSTANDING WITH RESPECT TO COMPENSATION. THIS LETTER, THE TERMS OF WHICH WERE SUBCONFIDENTIAL

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SEQUENTLY AGREED TO BY THE INTERESTED PARTIES, PROVIDED THAT THE CONSULTANT WOULD BE COMPENSATED WITH PAYMENTS EQUAL TO 13.33 OF KATY'S NET PROFITS ARISING OUT OF THE CONTRACT. FURTHER, KATY WOULD GIVE THE CONSULTANT A CASH ADVANCE OF \$100,000 DURING 1975 WHICH WOULD BE IN ADDITION

TO THE \$50,000 KATY ADVANCED IN 1974. IT WAS AGREED TO DEFER DISCUSSION OF THE 1976 ADVANCES UNTIL THE RESULTS OF THE EXPLORATION AND DRILLING PROGRAM FOR 1975 WERE REVIEWED. KATY, CARROLL AND JACOBS KNEW OR HAD REASON TO KNOW THAT THE OFFICIAL AND THE OFFICIAL'S REPRESENTATIVE WOULD DIRECTLY OR INDIRECTLY SHARE IN THAT COMPENSATION.

12. ON OR ABOUT AUGUST 29, 1975, CARROLL AND JACOBS CAUSED KATY TO ENTER INTO AN AGREEMENT, DATED APRIL 10, 1975, WITH BUSINESS DEVELOPMENT AND CONSULTING SERVICES, INC. ("BUSINESS DEVELOPMENT"), A CORPORATION TO BE ORGANIZED BY THE CONSULTANT AT A LATER DATE. THE AGREEMENT PROVIDED THAT KATY OIL COMPANY OF INDONESIA ("KATY-INDONESIA"), A WHOLLY OWNED SUBSIDIARY OF KATY, WOULD ANNUALLY PAY TO BUSINESS DEVELOPMENT AN AMOUNT EQUAL TO 13.33 OF THE ANNUAL NET PROFITS OF KATY-INDONESIA ARISING OUT OF ITS CONTRACT WITH PERTAMINA (SOMETIME PRIOR TO APRIL 10, 1975 KATY ASSIGNED ITS INTEREST IN THE CONTRACT TO KATY-INDONESIA). IN ADDITION, KATY-INDONESIA AGREED TO MAKE ADVANCE CASH PAYMENTS TOTALING \$250,000 TO BUSINESS DEVELOPMENT. THE \$50,000 PAID TO THE CONSULTANT DURING 1974 WAS APPLIED AGAINST THE ADVANCE CASH PAYMENTS OF \$250,000. THE REMAINING \$200,000 WAS TO BE PAID IN FOUR \$50,000 INSTALLMENTS ON SEPTEMBER 1, 1975, OCTOBER 1, 1975, FEBRUARY 1, 1976 AND MAY 1, 1976. THESE PAYMENTS WERE TO BE APPLIED AGAINST BUSINESS DEVELOPMENT'S 13.33 SHARE OF KATY-INDONESIA'S NET PROFITS BUT WERE NOT BE REFUNDED IF THE NET PROFITS FELL SHORT OF THAT AMOUNT. THE TERMS OF THIS AGREEMENT ARE SUBSTANTIALLY THE SAME AS THOSE DISCUSSED AT THE OFFICIAL'S HOME IN INDONESIA ON OR ABOUT CONFIDENTIAL

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MARCH 19, 1975.

13. ON OR ABOUT AUGUST 7, 1975, THE CONSULTANT CAUSED BUSINESS DEVELOPMENT TO BE ORGANIZED AND INCORPORATED AS A CAYMAN ISLAND CORPORATION IN ORDER TO RECEIVE THE PAYMENTS FROM KATY-INDONESIA. BUSINESS DEVELOPMENT'S RECORDS INDICATE THAT FROM ON OR ABOUT SEPTEMBER 22, 1975 TO AT LEAST MAY 4, 1976, THE CONSULTANT AND THE OFFICIAL'S REPRESENTATIVE WERE THE SOLE SHAREHOLDERS OF BUSINESS DEVELOPMENT, EACH OWNING 50 OF THE TOTAL OUTSTANDING SHARES. FROM ON OR ABOUT SEPTEMBER 22, 1975 TO MAY 4, 1976, KATY-INDONESIA PAID \$200,000 TO BUSINESS DEVELOPMENT PURSUANT TO THE APRIL 10, 1975 AGREEMENT. CARROLL AND JACOBS KNEW THAT THESE PAYMENTS HAD BEEN MADE. BUSINESS DEVELOPMENT'S RECORDS INDICATE THAT UPON RECEIPT OF THE PAYMENTS FROM KATY-INDONESIA, IT DISTRIBUTED SUBSTANTIALLY ALL OF THE PROCEEDS IN THE FORM OF DIVIDENDS TO THE CONSULTANT AND THE OFFICIAL'S REPRESENTATIVE.

14. THE AGREEMENT DATED APRIL 10, 1975 BETWEEN KATY AND BUSINESS DEVELOPMENT WAS IN EFFECT UNTIL AUGUST 1978.

15. ON OR ABOUT FEBRUARY 5, 1974, IN A LETTER TO CERTAIN BANKS WHO ARE PARTIES TO THE KATY REVOLVING CREDIT AND TERM LOAN AGREEMENTS, CARROLL REPRESENTED THAT KATY BELIEVES THAT THE POTENTIAL FOR FINDING OIL IN THE CONTRACT AREA IS EXCELLENT AND THAT CHANCES FOR DISCOVERY OF AT LEAST ONE MAJOR FIELD PRODUCING 50,000 BARRELS PER DAY IS LIKELY. IN ADDITION, CARROLL STATED THAT A LEADING GEOLOGICAL FIRM ESTIMATED THAT KATY'S SHARE OF ONLY ONE SUCH FIND WOULD BE \$108,000,000. ALTHOUGH EXPLORATION IN THE AREA COVERED BY THE CONTRACT HAS CEASED PENDING THE RESOLUTION OF CERTAIN TAX PROBLEMS, IT IS ANTICIPATED THAT
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THESE MATTERS WILL BE RESOLVED AND THAT EXPLORATION WILL BEGIN AGAIN BEFORE THE END OF THE YEAR.

16. FROM AT LEAST IN OR ABOUT 1972 TO THE PRESENT, KATY'S BOOKS AND RECORDS HAVE NOT AND DO NOT REFLECT THAT A PORTION OF THE MONEY PAID BY KATY TO THE CONSULTANT, THE OFFICIAL'S REPRESENTATIVE AND BUSINESS DEVELOPMENT WAS EXPECTED BY KATY TO BE GIVEN BY THE RECIPIENTS TO THE OFFICIAL.

17. DURING THE PERIOD FROM 1972 TO THE PRESENT, KATY DISSEMINATED TO THE PUBLIC SEVERAL PROSPECTUSES IN CONNECTION WITH PROPOSED SALES OF KATY STOCK. CARROLL AND JACOBS, DIRECTLY OR INDIRECTLY, PARTICIPATED IN THE PREPARATION AND DISSEMINATION OF THESE PROSPECTUSES. THESE PROSPECTUSES CONTAIN UNTRUE STATEMENTS OF MATERIAL FACTS AND OMIT TO STATE MATERIAL FACTS CONCERNING CERTAIN OF THE MATTERS DESCRIBED IN PARAGRAPHS 3 THROUGH 16 ABOVE.

15. KATY'S PROXY SOLICITING MATERIALS CONTAIN UNTRUE STATEMENTS OF MATERIAL FACTS AND OMIT TO STATE MATERIAL FACTS CONCERNING CERTAIN OF THE MATTERS DESCRIBED IN PARAGRAPHS 3 THROUGH 16 ABOVE.

19. DURING THE PERIOD FROM 1972 TO THE PRESENT, KATY FILED WITH THE COMMISSION SEVERAL REGISTRATION STATEMENTS AND NUMEROUS ANNUAL AND PERIODIC REPORTS. CARROLL AND JACOBS, DIRECTLY OR INDIRECTLY, PARTICIPATED IN THE PREPARATION AND FILING OF MOST OF THESE DOCUMENTS. THE REGISTRATION STATEMENTS AND THE ANNUAL AND PERIODIC REPORTS CONTAIN UNTRUE STATEMENTS OF MATERIAL FACTS AND OMIT TO STATE MATERIAL FACTS THROUGH THE FAILURE TO DISCLOSE THE FACTS ALLEGED IN PARAGRAPHS 2 THROUGH 19 CONCERNING PAYMENTS MADE BY KATY TO OBTAIN BUSINESS IN

INDONESIA.

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20. BY REASON OF THE ACTIVITIES DESCRIBED IN 2 THROUGH 19 ABOVE, KATY, CARROLL AND JACOBS VIOLATED AND AIDED AND ABETTED VIOLATIONS OF SECTION 17(A) OF THE SECURITIES ACT.

21. WHEN COMPLAINT HAS BEEN FILED, DEPARTMENT WILL POUCH COPY OF COMPLAINT TO EMBASSY. VANCE

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<< END OF DOCUMENT >>

Message Attributes

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